IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 57 of 2002

1. M/s Om Printers and Stationers,
   Mohalla Neel Khundana, Jwalapur,
   Tehsil and District, Haridwar.
2. Sharwan Kumar Arora,
   S/o Shri Ram Singh Arora,
   R/o M/s Vikas Printers,
   Rishikul Vidhya Peeth, Haridwar.

..... Revisionists

Versus

Punjab National Bank & 03 others.

..... Respondents

Mr. Lok Pal Singh, Advocate for the revisionists.
None for the respondents.

Hon. Prafulla C. Pant, J.

Heard Mr. Lok Pal Singh, learned counsel for the revisionists. None present for the respondents even after notices being served and affidavit of service being filed by the defendant / revisionists.

2) This revision is directed against the order dated 05.07.2002, passed in Original Suit No. 198 of 1996, which is a recovery suit filed by the Punjab National Bank against the defendants / revisionists and the guarantors (respondent Nos. 2 to 4). By the impugned order, learned trial court has rejected the amendment application on the ground that it has been moved with an ulterior motive to delay the proceedings of the suit and the amendment is not bonafide. It is pertinent to mention here that the amendment application was moved prior to the amendment made in Order 6 Rule 17 of the Code of Civil Procedure, 1908 i.e. on 01.07.2002. The scope of the amendment is limited thereafter.

3) The amendment sought by the defendants is that the goods pledged to the Bank were ensured with the United India Insurance Company. It is further sought to be pleaded by way of amendment that goods were lost in the fire and a claim petition was filed before the Consumer Forum, in which certain sum was ordered to be paid. It is argued that said sum has been paid to the Bank and was required to be adjusted against the amount claimed from the defendants. This Court is of the view, that to the above extent, the amendment appears to be bonafide, and in the interest of justice, should have been allowed by the trial court as the said fact was necessary to decide as to what extent the suit for recovery is to be decreed. However, para 14-B, which is sought to be added by way of impugned amendment application, cannot be said to be necessary to be raised in the written statement for real questions involved between the parties. By para 14-B, the plaintiffs have sought to raise the plea that the suit was bad for non-joinder of United India Insurance Company. The transaction of the loan and transaction of insurance are two separate transactions and learned trial court has rightly rejected the amendment to that effect.

4) In the above circumstances, this revision is partly allowed. The amendment application dated 11.03.2002 (68-B) moved before the trial court, in Original Suit No. 198 of 1996 is allowed for amendment to be incorporated para 14-A in the written statement. However, for the prayer to incorporate para 14-B, the application shall stand rejected. With the above observation, the revision stands disposed of and interim order passed by the Court on 02.12.2002 stands vacated. No order as to costs.

(Prafulla C. Pant, J.)

Dt. March 08, 2006.
H. Negi